(2017) 01 AHC CK 0300

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 429 of 2016

M/S Sanmti Infrastate Pvt. Ltd. — APPELLANT

Vs

Commissioner, Commercial Tax — RESPONDENT

Date of Decision : 04-01-2017

Acts Referred:

Citation : (2017) 95 UPTC 189

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Naveen Chandra Gupta, Advocate, for the Applicant; C.S.C, for the Opposite Party

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—This revision arises out of assessment proceedings for the year 2011-12 (central) whereby penalty under section 10A of the Central Sales Tax Act has been imposed upon the revisionist. The revision has been admitted by this Court on 7.11.2016 vide following orders:-

"Heard Sri Naveen Chandra Gupta, learned counsel for the applicant-revisionist and Sri B.K. Pandey, learned standing counsel for the respondent.

Admit on the following questions of law:

"(i) Whether the Commercial Tax Tribunal as well as authority below were justified to levy the penalty under Section 10A of the Central Sales Tax without giving any finding of intention to misuse Form-C?

(ii) Whether the Tribunal was justified to reject the appeal and confirm the penalty order on the facts and circumstances of the case?"

List for hearing after four weeks.

Interim order dated 3.10.2016 granted earlier, is extended till further orders of this Court."

2. Learned counsel for the revisionist submits that there is no finding in the order of the authorities that there was any intention on part of the assessee to evade tax, and therefore, in the absence of any finding of false representation or mens rea, the authorities were not justified in levying penalty under the Act. Learned counsel has relied upon a judgment of the Apex Court in Commissioner of Sales Tax U.P. v. M/s Sanjiv Fabrics: (2010) 9 SCC 630. The provisions contained under section 10A, with which we are concerned herein was examined by the Apex Court. The Court examined the import of the words "falsely represents" to include only such false representations which have been made knowingly, wilfully and intentionally. After considering the question in the context of language employed by the statute, their Lordships have been pleased to observe as under in para 22 of the judgment:-

"22. In view of the above, we are of the considered opinion that the use of the expression "falsely represents" is indicative of the fact that the offence under Section 10(b) of the Act comes into existence only where a dealer acts deliberately in defiance of law or is guilty of contumacious or dishonest conduct. Therefore, in proceedings for levy of penalty under Section 10A of the Act, burden would be on the revenue to prove the existence of circumstances constituting the said offence. Furthermore, it is evident from the heading of Section 10A of the Act that for breach of any provision of the Act, constituting an offence under Section 10 of the Act, ordinary remedy is prosecution which may entail a sentence of imprisonment and the penalty under Section 10A of the Act is only in lieu of prosecution. In light of the language employed in the Section and the nature of penalty contemplated therein, we find it difficult to hold that all types of omissions or commissions in the use of Form ''C'' will be embraced in the expression "false representation". In our opinion, therefore, a finding of mens rea is a condition precedent for levying penalty under Section 10(b) read with Section 10A of the Act."

3. Learned counsel therefore submits that in the absence of any finding of mens rea the imposition of penalty cannot be sustained.

4. Learned Standing Counsel although has attempted to justify the order, but has not been able to demonstrate from the orders passed by the authorities under the Act that any finding of mens rea has been returned or that the assessee had falsely misrepresented facts so as to evade payment of tax.

5. In view of the authoritative pronouncement of law by the Apex Court, this Court finds that in the absence of any finding of mens rea/ intentional misrepresentation on part of the assessee, no penalty was liable to have been imposed.

6. In such circumstances, the present revision succeeds and is allowed. The order dated 29.3.2016, passed by Commercial Tax Tribunal, Muzzafar Nagar, in Appeal No.122 of 2015, under section 10A of the Central Sales Tax Act cannot be sustained and is hereby quashed. Tribunal shall proceed in accordance with law.